U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

B7

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 21 2005
WAC 00 070 52366

IN RE: Petitioner: [redacted]

PETITION: Immigrant Petition by Alien Entrepreneur Pursuant to Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)

ON BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, California Service Center. In connection with the petitioner's Application to Register Permanent Residence or Adjust Status (Form I-485), the director served the petitioner with a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the preference visa petition, Form I-526. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho,* 19 I&N Dec. 582, 590 (BIA 1988).

The petitioner seeks classification as an alien entrepreneur pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5).

The director determined that the petitioner had failed to demonstrate the lawful source of her funds or that she would be involved in the management of the new commercial enterprise. On appeal, the petitioner submits new evidence, some of which is inconsistent with previously submitted documents and statements by counsel regarding the ownership of the corporations at issue. For the reasons discussed below, the petitioner has not overcome the director's bases for revocation. Moreover, as will also be discussed below, the evidence submitted on appeal raises new concerns regarding whether the petitioner's "investment" was a qualifying equity investment in an employment generating entity.

Section 203(b)(5)(A) of the Act, as amended by the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002), provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

> (i) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and
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> (ii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

The petitioner indicated on the Form I-526 petition that the new commercial enterprise is [redacted] The petitioner asserted that the business was not located in a targeted employment area for which the required amount of capital invested has been adjusted downward. Thus, the required amount of capital in this case is $1,000,000.

On the petition, the petitioner claimed to have invested $1,000,000 on July 2, 1999 and a total of $1,800,000 as of the date of filing. The record, however, reflects that a considerable amount of these funds were actually transferred to Di Nitto Properties, Inc., a separate corporation. As will be discussed in more detail below, [redacted] Inc. purchased the land on which the new commercial enterprise is operating. The problems with this arrangement have become apparent on appeal and will be explained in detail below after we address the director's bases for revocation.

[redacted]

SOURCE OF FUNDS

The regulation at 8 C.F.R. § 204.6(j) states, in pertinent part, that:

> (3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:
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> (i) Foreign business registration records;
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> (ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;
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> (iii) Evidence identifying any other source(s) of capital; or
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> (iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. *Matter of Ho*, 22 I&N Dec. 206, 210-211 (Comm. 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Comm. 1998). Without documentation of the path of the funds, the petitioner cannot meet his burden of establishing that the funds are his own funds. *Id.* Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972); *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998). These "hypertechnical" requirements serve a valid government interest: confirming that the funds utilized are not of suspect origin. *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Calif. 2001)(affirming a finding that a petitioner had failed to establish the lawful source of her funds due to her failure to designate the nature of all of her employment or submit five years of tax returns).

Initially, counsel asserted that the petitioner and her sister were beneficiaries of a family trust. Later in this letter, counsel asserted that [redacted] Inc. funded its property purchase through wire transfers from a Merrill-Lynch account. Counsel further asserts that the "California Department of Alcohol Beverage Control investigated the origin of all funds used on the project and determined that they were lawful." Finally, counsel asserts that fixtures and furniture for the restaurant were purchased in Italy and shipped to the United States. On Part 4 of the petition, however, the petitioner responded "N/A" to the question regarding how much property was transferred from abroad.

Initially and in response to the director's request for additional evidence, the petitioner submitted some transactional documentation. This documentation reflects the following transfers to Mission Valley Escrow regarding the property purchase by [redacted]:

From the petitioner's spouse: $39,500 on May 13, 1999, $179,500 on the same date, and $820,000 on June 9, 1999.

From counsel: $1,000 on May 5, 1999.

From [redacted] $60,000 on September 17, 1999.[1]

The documentation also reflects the following transfers to [redacted] Union Bank account, number 230000619:

From the petitioner's father: $150,000 on August 3, 1999 and $111,895.45 on November 17, 1999.

From Charon Limited: $60,000 on December 2, 1999 and $70,000 on December 20, 1999.

From unidentified sources: $150,000 on August 20, 1999 and $81,000 on August 24, 1999.

In response to the director's request for additional evidence, counsel asserted that the August 3, 1999 transfer from the petitioner's father is from the trust account in Italy of which the petitioner is a beneficiary. Counsel further asserted that [redacted] is another family trust for which Merrill Lynch is the trustee and the petitioner is a beneficiary. The petitioner did not submit the actual trust documentation and any necessary translation.[2] The petitioner also submitted 120 pages of foreign language documents without translation. Counsel asserted that these documents constitute "[f]amily and business tax returns." The petitioner also submitted evidence that she sold her house after the transfer dates listed above and of a foreign business interest. This documentation does not appear to relate to the source of the 1999 transfers. Finally, counsel asserted that the petitioner's spouse and the spouse of her sister are not "making any capital contribution toward this businesses [sic]."

On June 23, 2000, the director approved the petition. On September 7, 2000, the petitioner filed a Form I-485, Application to Adjust Status or Register Permanent Residence. At this time, the director reviewed the underlying petition. In response to a request for evidence regarding the petitioner's Form I-485 adjudication, the petitioner submitted her own tax returns; a statement from the petitioner's father that he retired 20 years ago, placing the money from the sale of his business with Merrill-Lynch; a letter from Merrill-Lynch confirming that the petitioner's father is a customer but listing no account numbers; statements for Charon, Ltd.'s accounts at Merrill-Lynch and foreign tax returns with no translation. The petitioner's father makes no mention of a family trust. The letter from Merrill-Lynch makes no connection between the petitioner's father and Charon, Ltd.

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[1] These funds cannot be considered above and beyond the funds transferred to [redacted] and considered below. Other evidence in the record reveals that these funds represented a partial payment for the liquor license, explaining why the restaurant would contribute these funds.

[2] The director implies that the record does contain a trust document, although counsel's cover letters make no reference to submitting such evidence. If the trust documentation is part of the file, it is not accompanied by an English translation and we were unable to recognize it as such.

On December 17, 2002, the director issued the NOIR, concluding that the petitioner had not established the connection between the foreign language documents and the funds transferred to escrow and the new commercial enterprise. In a different section of the NOIR, the director noted that the petitioner's spouse was the source of several transfers.

In response counsel stated:

> Numerous documents are poorly identified in your letter. Account statements that reflect an investment account in the amount of $17,000,000 at Merrill Lynch in New York. The documentation reflects that this corpus has resided in the U.S. for over 20 years. There is also a declaration from the father that he has permanently relinquished all funds to his daughter. The daughter holds the corporate stock. The father holds none.

Counsel further asserts that the increase in value of the restaurant should be credited to the petitioner.

The director concluded that the evidence still did not establish a connection between the assets of the petitioner's family and the claimed investment. The director noted that the record did not establish the existence of a $17,000,000 Merrill Lynch account or its relevance to the claimed investment.

On appeal, the petitioner submits statements for two [redacted] Ltd. Merrill Lynch accounts, number [redacted] and number [redacted] The June 1998 statement for account [redacted] reflects that the Net Portfolio Value decreased from $6,606,371 to $0 during that month. [redacted] Ltd. transferred $1,094,225 to Merrill Lynch account 119-03028 on June 8, 1998 and $1,500 to account [redacted] on the same date. We were unable to discern the disposition of the remaining funds from the statement submitted. The June 30, 2000 Net Portfolio Value of account [redacted], the account from which [redacted], Ltd. transferred $130,000 to the new commercial enterprise in December 1999, was $9,509,149, with borrowing power of $1,617,649 and buying power of $1,623,578. The petitioner also submitted 1985 documentation regarding the sale of equipment from Fiveca, a company registered in Venezuela, by the petitioner's father.

The record still does not contain any evidence that [redacted] Ltd. is a trust set up by the petitioner's father or that the petitioner is a beneficiary of that trust. Thus, the petitioner has not established that she is the source of the funds [redacted] Ltd. transferred.

Moreover, the petitioner has failed to explain or document how the $1,039,000 transferred to escrow by her spouse traces back to her family trust, the only claimed source of funds. While we would credit the petitioner with an investment from a marital account, the *untranslated* tax returns for her spouse do not establish how he lawfully accumulated that amount.[3]

Even if the petitioner had traced these funds back to a family trust, the documentation submitted on appeal reveals that the petitioner's brother is also a shareholder of [redacted] Properties, contrary to the representation by counsel in his response to the request for additional evidence in 2000. Specifically, the minutes for the July 1, 1999 minutes for the Board of Directors' meeting for [redacted] Properties reveals that the petitioner's brother also purchased an equal share of stock. As counsel's address is listed as the address for [redacted] Properties on its application for an Employer Identification Number, he appears to have been involved with

[3] Any document containing a foreign language must be accompanied by a translation certified as complete and accurate. 8 C.F.R. § 103.2(b)(3).

this corporation. As such, his clear and unequivocal statement in response to the 2000 request for additional evidence that the petitioner's brother had "no interest" in [redacted] Properties (p. 2 of counsel's letter) somewhat reduces counsel's credibility. Moreover, these minutes are inconsistent with the ledger for [redacted] Properties, also submitted in response to the 2000 request for evidence, that shows certificates issued to only the petitioner and her sister. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 591-592. The record does not resolve this inconsistency. As the record now reveals that three beneficiaries of the family trust purchased shares in [redacted] Properties, the petitioner must demonstrate how much of the transferred funds represent her personal investment and document that additional funds were transferred to purchase the other interests. She has not done so. Regardless, for the reasons discussed below, we are not convinced that this purchase represents an investment in an employment generating enterprise.

Furthermore, while the record adequately traces the $261,895.45 from the petitioner's father to the new commercial enterprise, the record does not establish the nature of this transfer. The record does not include a trust document reflecting a family trust at Webster Bank of which the petitioner is a beneficiary. Moreover, in his cover letter, counsel asserts that the petitioner established this business with her sister, also a beneficiary of the family trust. The record does not make clear how much of these funds represent each sister's "investment."

Finally, while the law and regulations do not require that the invested funds be from overseas, the regulations do require an infusion of funds. Specifically, the regulations state that an investment is a *contribution* of capital, and not simply a failure to remove money from the enterprise. The definition of "invest" in the regulations quoted above does not include the reinvestment of proceeds. In addition, 8 C.F.R. § 204.6(j)(2) lists the types of evidence required to demonstrate the necessary investment. The list does not include evidence of the reinvestment of the proceeds of the new enterprise. *See generally De Jong v. INS*, No. 6:94 CV 850 (E.D. Tex. Jan. 17, 1997); and *Matter of Izummi*, 22 I&N Dec. at 195, for the propositions that the reinvestment of proceeds cannot be considered capital and that corporate earnings cannot be considered the earnings of the petitioner even if he is a shareholder of the corporation. *See also Kenkhuis v. INS*, No. 3:01-CV-2224-N (N.D. Tex. Mar. 7, 2003)(upholding the application of this principle to a sole proprietorship).

In summary, the petitioner has submitted numerous documents with no relevance to the claimed source of funds, such as the tax returns of her spouse and her sister's spouse and a property sale by the petitioner after the funds were "invested," and no documentation regarding the claimed source of funds, one or two family trusts that have not been shown to exist. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972), broadened in *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) and *Matter of Ho*, 22 I&N Dec. 206, 211 (Comm. 1998). Thus, the petitioner's failure to submit the trust documentation precludes a finding that she has established the source of her funds. The family and business tax returns that might establish how the petitioner's father accumulated the money allegedly placed in the family trusts are not translated and the petitioner did not provide exchange rates. Thus, we concur with the director's ultimate conclusion that the petitioner has not established the lawful source of the transferred funds.

MANAGEMENT

The regulation at 8 C.F.R. § 204.6(j)(5) states:

> To show that the petitioner is or will be engaged in the management of the new commercial enterprise, either through the exercise of day-to-day managerial control or through policy formulation, as opposed to maintaining a purely passive role in regard to the investment, the petition must be accompanied by:
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> (i) A statement of the position title that the petitioner has or will have in the new enterprise and a complete description of the position's duties;
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> (ii) Evidence that the petitioner is a corporate officer or a member of the corporate board of directors; or
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> (iii) If the new enterprise is a partnership, either limited or general, evidence that the petitioner is engaged in either direct management or policy making activities. For purposes of this section, if the petitioner is a limited partner and the limited partnership agreement provides the petitioner with certain rights, powers, and duties normally granted to limited partners under the Uniform Limited Partnership Act, the petitioner will be considered sufficiently engaged in the management of the new commercial enterprise.

We concur with counsel that the petitioner need not be employed by the new commercial enterprise and that the requirements for this issue are minimal. Moreover, the petitioner need only establish that she will participate in the management of the company, not that she already does so. Nevertheless, given the inconsistencies in the record regarding the petitioner's position with the new commercial enterprise, the director's concerns were not unreasonable.

On the petition, the petitioner listed her position as President of [redacted] Inc. The September 1999 Application for Business License lists the petitioner's spouse as the president and secretary, her sister's spouse as an "officer" and [redacted] as the general manager. The Application for Public Health Permit, inexplicably dated November 12, 1997, 19 months before the petitioner's spouse incorporated [redacted] Inc., lists him as the president and secretary and the spouse of the petitioner's sister as an "officer." The petitioner's spouse is listed as the owner on the 1999 Business Registration Certificate and an October 5, 1999 permit application.

On appeal, the petitioner submits the minutes of alleged Board Meetings for both [redacted] Restaurants and [redacted] Properties. These minutes indicate that the petitioner and her sister were elected and retained as directors of both corporations. While these positions do not conflict with earlier documentation indicating that the petitioner's spouse is an officer, not a director, the petitioner's sister signed all but one of these minutes as secretary. As stated above, however, other documentation identifies the petitioner's spouse as the secretary. While the petitioner signed the minutes for the August 12, 1999 meeting of the [redacted] Restaurants board, the minutes are somewhat suspect as they state that all present elect the petitioner and her sister "Directors of [redacted] Properties, Inc.," a wholly separate corporation. As stated above, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 591-592.

The above evidence simply contains too many unresolved inconsistencies for us to conclude that the director's concerns were not valid. Moreover, as discussed above and below, the board meeting minutes are inconsistent with stock ledgers submitted previously regarding the ownership of both [redacted] Restaurants and [redacted] Properties. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

INVESTMENT OF CAPITAL

Beyond the decision of the director,[4] we find that the petitioner has not established a qualifying equity investment in an employment generating entity.

The regulation at 8 C.F.R. § 204.6(e) states, in pertinent part, that:

> *Capital* means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness.
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> * * *
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> *Invest* means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

The regulation at 8 C.F.R. § 204.6(j)(2) states, in pertinent part, that:

> To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital. Such evidence may include, but need not be limited to:
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> (i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;
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> (ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices, sales receipts, and purchase contracts

[4] An EB-5 application that fails to comply with the specific technical requirements of the law may be denied even if the Service Center does not identify all grounds for denial. *Spencer Enterprises, Inc. v. United States,* 299 F. Supp. 2d 1025, 1043, (E.D. Calif. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003).

containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;

(iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;

(iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or

(v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

The record reveals two problems with the petitioner's purported investment. First, the record reveals that the full investment was not an equity investment as required by the regulations. Second, as stated above, the petitioner relies on contributions to two different corporations, only one of which, the entity identified on the petition, will generate any employment.

The general ledger submitted on appeal, admittedly submitted earlier, contains the following information regarding liability and equity accounts:

Beginning Balance			2025	Note Payable – Stockholder	
9/30/99	9	JE6	2025	PURCHASE DOMINIC'S	-102,600.00
12/31/99	12	JE11	2025	CASH RECEIPTS FOR 1999	-121,798.05
12/31/99	12	JE 13	2025	CASH RECEIPTS – 1999	-48,295.25
12/31/99	12	JE13	2025	FURNITURE & MENU	-73,725.42
12/31/99	12	JE14	2025	ADJUSTMENT	-480,219
	Ending Balances =				-826,638.51

The record contains no evidence regarding Dominic's as a stockholder or any other explanation for this account. Account 2310 reflects amount due to the petitioner and account 2315 reveals amounts due to the petitioner's sister. Account 3000 represents three draws totaling $1,750 by the petitioner's spouse, a cash draw and a withdrawal. We note that the petitioner submitted the 2000 corporate tax return for Tiberius Antro Restaurants in response to a 2001 request for evidence regarding her adjustment application. Schedule L of this return reflects $813,455 in shareholder loans to the company. As quoted above, the definition of invest precludes consideration of a loan to the new commercial enterprise as a qualifying investment. Thus, any funds loaned by the petitioner to Tiberius Antro Restaurants cannot be considered. Moreover, it appears that these funds were repaid, revealing the petitioner did not maintain that part of her "investment."

Finally, and of most concern, account 3010 represents Common Stock. The account reflects several deposits and an adjustment, resulting in a balance of only $100,000. The August 12,1999 minutes for meeting of the

Board of Directors for [redacted] Restaurants indicates that the petitioner had a proxy to vote the shares of [redacted] The minutes for several subsequent meetings also include references to proxies for this shareholder. Thus, there appears to be a third shareholder of this corporation not previously revealed. These minutes are inconsistent with the ledger submitted previously revealing only two share certificates issued by [redacted] Restaurants. The minutes are also inconsistent with the restaurant's 2000 tax returns, which includes only two schedules K-1. As stated above, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 591-592. The petitioner has not resolved this inconsistency.

Regardless of the above inconsistencies, the general ledger and the 2000 tax return, Schedule L, both reflect stock of $100,000. The general ledger does not include an additional paid in capital account and Schedule L reveals no additional paid in capital. Even if the petitioner were the only stockholder in the company, stock of $100,000 is far below the $1,000,000 required.

Finally, section 203(b) of the Act states that the alien must be seeking to engage in "a" new commercial enterprise. The regulation at 8 C.F.R. § 204.6(e) provides:

> Commercial enterprise means any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to, a sole proprietorship, partnership (whether limited or general), holding company, joint venture, corporation, business trust, or other entity which may be publicly or privately owned. This definition includes a commercial enterprise consisting of *a holding company and its wholly-owned subsidiaries*, provided that each such subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business. This definition shall not include a noncommercial activity such as owning and operating a personal residence.

(Emphasis added.) In response to the director's request for additional evidence, counsel refers to [redacted] Restaurants and [redacted] Properties as "alter egos." This characterization is not persuasive. A corporation is a separate and distinct legal entity from its owners or stockholders and, thus, certainly is distinct from another corporation with similar ownership. *See Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); *Matter of M-*, 8 I&N Dec. 24 (BIA 1958; A.G. 1958). As neither corporation is a wholly-owned subsidiary of the other, we cannot consider both corporations.

While the above discussion may seem technical, the problem of demonstrating a nexus between investment and employment creation if an investment in more than one corporation is permitted is obvious in this case. The full amount of the requisite investment must be made available to the business most closely responsible for creating the employment upon which the petition is based. *Matter of Izummi*, 22 I&N Dec. at 179. While that case involved different facts, we have consistently relied on that case for the proposition that there must be some nexus between the petitioner's investment and the employment being created.

As a separate corporation functioning as a passive real estate investment, [redacted] Properties has no direct nexus to the employment creation. Specifically, while [redacted] Properties owns the property on which the restaurant is located, the petitioner submitted the lease for this property indicating that [redacted] Restaurants is leasing the property from [redacted] Properties for $7,000 per month. These are funds the restaurant would not owe had the petitioner infused the funds for the purchase of this land directly into the

corporation operating the restaurant. Thus, we fail to see how the purchase of this land contributes to the employment generating activities of the restaurant.

EMPLOYMENT CREATION

The regulation at 8 C.F.R. § 204.6(j)(4)(i) states:

> To show that a new commercial enterprise will create not fewer than ten (10) full-time positions for qualifying employees, the petition must be accompanied by:
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> (A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
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> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

The regulation at 8 C.F.R. § 204.6(e) states, in pertinent part:

> *Qualifying employee* means a United States citizen, a lawfully admitted permanent resident, or other immigrant lawfully authorized to be employed in the United States including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or an alien remaining in the United States under suspension of deportation. This definition does not include the alien entrepreneur, the alien entrepreneur's spouse, sons, or daughters, or any nonimmigrant alien.

Section 203(b)(5)(D) of the Act, as amended, now provides:

> Full-Time Employment Defined – In this paragraph, the term 'full-time employment' means employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.

Finally, and most significant to the discussion below, the regulation at 8 C.F.R. § 204.6(g)(2) relates to multiple investors and states, in pertinent part:

> The total number of full-time positions created for qualifying employees shall be allocated solely to those alien entrepreneurs who have used the establishment of the new commercial enterprise as the basis of a petition on Form I-526. No allocation need be made among persons not seeking classification under section 203(b)(5) of the Act or among non-natural persons, either foreign or domestic. The Service shall recognize any reasonable agreement made among the alien entrepreneurs in regard to the identification and allocation of such qualifying positions.

Full-time employment means continuous, permanent employment. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1039 (E.D. Calif. 2001)(finding this construction not to be an abuse of discretion).

Pursuant to 8 C.F.R. § 204.6(j)(4)(i)(B), if the employment-creation requirement has not been satisfied prior to filing the petition, the petitioner must submit a "comprehensive business plan" which demonstrates that "due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired." To be considered comprehensive, a business plan must be sufficiently detailed to permit Citizenship and Immigration Services (CIS) to reasonably conclude that the enterprise has the potential to meet the job-creation requirements.

A comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *Matter of Ho*, 22 I&N Dec. at 213. Elaborating on the contents of an acceptable business plan, *Matter of Ho* states the following:

> The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

Id.

Forms I-9, verify, at best, that a business has made an effort to ascertain whether particular individuals are authorized to work; they do not verify that those individuals have actually begun working. In the absence of such evidence as pay stubs and payroll records showing the number of hours worked, the petitioner has not met her burden of establishing that she has created full-time employment within the United States. *Id.* at 212.

While not directly discussed by the director, the petitioner has also failed to demonstrate that her investment will create the required number of jobs. The petitioner did submit evidence that the new commercial enterprise employed 32 employees in the first quarter of 2000. The wages for that quarter, however, reveal that only 11 of those employees could have worked full-time at minimum wage. The petitioner is one of two investors in Tiberius Antro Restaurants seeking benefits under this classification. The record contains no agreement allocation employees between them. Thus, in order for the petitioner to qualify in addition to her sister, she must demonstrate that she will create at least 20 full-time jobs. As stated above, the record does not demonstrate that the petitioner has already done so and the record does not contain a business plan for Tiberius Antro Restaurants, the entity listed as the new commercial enterprise on the petition.

For all of the reasons set forth above, considered in sum and as alternative grounds for denial, this petition cannot be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.